

**Letter of Findings Number: 04-20140288P
Tax Administration
For Tax Years 2003-2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration - Negligence Penalty.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); [45 IAC 2.2-2-2](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is in the business of selling software. It has been in business since 2000, and elects to file as an S corporation. The Indiana Department of Revenue ("Department") conducted an audit and found that Taxpayer was collecting but not reporting sales tax paid by Indiana customers. The Department issued proposed assessments of additional sales tax, penalties, and interest. Taxpayer protests the imposition of penalties. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Tax Administration - Negligence Penalty.

DISCUSSION

Taxpayer protests the Department's proposed assessment of penalties. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

A taxpayer who "fails to file a return for any of the listed taxes" or "incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to file the required return or pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. However, a taxpayer's ignorance of Indiana's tax laws does not constitute reasonable cause. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

Taxpayer argues that it was relying on the services of an inexperienced bookkeeper. Once it discovered that this was the case, it acted as a reasonable person and corrected the situation, remedying the issues raised by the Department's audit. Also, Taxpayer points out that it is acting reasonably to pay the deficiency identified in the audit report. Finally, Taxpayer points out that the audit report recognized that it had appropriately and accurately self-assessed use tax throughout the audit period. Therefore, it is being penalized for a single mistake made multiple times.

However, the audit report indicates that Taxpayer began collecting sales tax in 2004, but failed to remit the sales tax to the state. The sales tax is a trust tax, collected by the retail merchant on behalf of the state and remitted regularly. IC § 6-2.5-2-1(b); [45 IAC 2.2-2-2](#). "The retail merchant shall collect the tax as agent for the state." Id. Taxpayer collected but did not remit the sales tax for several years, and therefore kept payments to which it was not entitled. Additionally, although Taxpayer may have acted reasonably after discovering that it was relying on an inexperienced bookkeeper, it was negligent in relying on the inexperienced bookkeeper for an extended period of time. Ignorance of Indiana's tax laws does not constitute reasonable cause. [45 IAC 15-11-2](#). Taxpayer's protest of the proposed assessment of penalties is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

Taxpayer's protest is respectfully denied regarding the imposition of penalties.

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